

REMARKS

A. Background

Claims 1-4, 6-8, and 10-26 were pending in the application at the time of the Office Action. All of the pending claims were rejected as being obvious over cited art. By this response applicant has amended claims 1, 4, 6, 8, 10, 14, 16, 17, 21, 22, and 25; and added new claims 27 and 28. As such, claims 1-4, 6-8, and 10-28 are presented for the Examiner's consideration in light of the following remarks.

B. Proposed Claim Amendments

Applicant has herein amended claims 1, 4, 6, 8, 10, 14, 16, 17, 21, 22, and 25 and added new claims 27 and 28 to further clarify, more clearly define, and/or broaden the claimed inventions to expedite receiving a notice of allowance. For example, independent claims 1, 10, and 14 have been amended to recite that the jacket has an open and a closed position and that the first and second half shells of the jacket hold their three-dimensional shapes whether the jacket is in the open or closed position. Other clarifying amendments have also been made to various claims. The amendments to the claims are supported throughout the application and at least by Figures 2, 3, and 4 and lines 24-28 of the specification as originally filed. In view of the foregoing, applicant submits that the amendments to the claims do not introduce new matter and entry thereof is respectfully requested.

C. Examiner Interview

Applicant would like to thank the Examiner for the courtesy of the telephone interview conducted on December 14, 2010 between the undersigned and the Examiner of record in the present application. The present invention was discussed and contrasted with the cited art. Amendments were also generally discussed that clarify that the half shells of the jacket of the present invention retain their shapes in both the open and closed positions. The Examiner conceded that with the clarifying amendments, the claims would likely overcome the cited art. The amendments and remarks presented herein are consistent with the proposals and remarks presented during the interview and which generally appeared, during the interview, to distinguish the claims from the cited references and to overcome all of the rejections of record.

C. Claim Rejections based on 35 U.S.C. 103

Paragraphs 1-17 of the Office Action reject claims 1-4, 11, 12, 14-16, 20, 21, and 24-26 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,955,020 to Cavanagh et al. (“*Cavanagh*”) in view of French Patent No. 2731210 to Block (“*Block*”). Paragraphs 18-29 reject claims 6-8, 10, 13, 17-19, 22, and 23 as being obvious over *Cavanagh* in view of *Block* and U.S. Patent No. 5,525,383 to Witkowski (“*Witkowski*”). Of the rejected claims, claims 1, 10, and 14 are independent. Applicant respectfully traverses these rejections.

Cavanagh discloses a glass container, such as a beverage bottle 1, having a laminate plastic wrapper. This wrapper is thin, somewhere between about 1 and 8 mils, with a first layer of about .75 to 5 mils and an outer layer that is “preferably as thin as possible” (about .5 to 3 mils). See col. 4, line 68 thru Col. 5, line 25. The flexible laminate is wrapped about the bottle and secured to the bottle with adhesives which help provide the desired characteristics of laminate, including resistance to breakage of the bottle(s) and the ability to display a graphic design in a desired manner. See col. 4, line 22; and col. 5, line 15 to Col. 6, line 35. As conceded in the Office Action, the *Cavanagh* laminate does not teach half shells that are hinged together.

To attempt to cure the above identified deficiency of *Cavanagh*, the Office Action cites to *Block*. *Block* discloses isothermal display packaging for bottles. The *Block* packaging is cut out of flat sheets and then formed into sleeves for covering a bottle. As such, the *Block* packaging is necessarily flexible. In one embodiment, *Block* discloses two halves 102 and 112 that intersect at a fold line 115d. See Figure 1D. Once the flat packaging sleeve is cut out, the sleeve is then generally formed in the partial shape of the bottle by bringing the opposite sides of the two halves together. However, a portion of the sleeve remains open so as to allow the bottle to be inserted into the sleeve. Once the bottle has been inserted therein, the portion of the sleeve is closed and secured to the rest of the sleeve. For example, in Figure 1D of *Block*, the bottom portion 103d remains open until the bottle has been inserted into the sleeve. Only then can bottom portion 103d be closed and a flap 13 extending therefrom be adhered to the body portion. Thus, because of the sleeve’s flexibility and method of use, the two halves of the *Block* sleeve do not take a final shape until the bottle has been inserted within the sleeve, long after the two halves are initially partially brought together or closed.

Witkowski discloses a flexible wrap that is wrapped around a cup or bottle or the like. *Witkowski* is merely cited for allegedly teaching the inclusion of tape to seal a plastic film. Similar to *Cavanagh* and *Block*, *Witkowski* also does not disclose a covering having two halves that take a final shape before being placed around an item.

Because all of the cited references disclose flexible coverings that do not have halves that take a final shape before covering a bottle or other container, Applicant submits that none of the cited references, taken individually or collectively, teach, suggest, or reasonably support a jacket that is “hingeable about the generatrix between an open position in which the second edge of the first half shell is spaced apart from the second edge of the second half shell, and a closed position in which the second edge of the first half shell is adjacent to or in direct contact with the second edge of the second half shell, **the first and second half shells retaining their respective three-dimensional shapes when the jacket is in the open and closed positions,**” as recited in independent claims 1, 10, and 14.

In light of the above discussion, Applicant submits that a *prima facie* case of obviousness regarding claims 1, 10, and 14 has not been established at least because the allegedly obvious combinations would not include each and every limitation recited in the rejected claims. Accordingly, Applicant respectfully requests that the obviousness rejections with respect to claims 1, 10, and 14 be withdrawn.

Claims 2-4, 6-8, 11-13, and 15-26 depend from claims 1, 10, and 14 and thus incorporate the limitations thereof. As such, applicant submits that claims 2-4, 6-8, 11-13, and 15-26 are distinguished over the cited art for at least the same reasons as discussed above with regard to claims 1, 10, and 14. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 2-4, 6-8, 11-13, and 15-26 also be withdrawn.

No other objections or rejections are set forth in the Office Action.

D. New Claims

Applicant submits that new claims 27 and 28 are also distinguished over the cited art. For example, claim 27 recites that “the inside surfaces of the first and second half shells correspond to the form of the container wall when the jacket is in the open position,” and claim 28 recites that “the first and second half shells are substantially identical.” Applicant submits

that none of the cited art teaches or suggests the aforementioned limitations in conjunction with the other limitations required by those claims.

Furthermore, claims 27 and 28 respectively depend from claims 1 and 14 and thus incorporate the limitations thereof. As such, claims 27 and 28 are distinguished over the cited art for at least the same reasons discussed above regarding claims 1 and 14.

E. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 1-4, 6-8, and 10-28 as amended and presented herein.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 22nd day of December 2010.

Respectfully submitted,

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